

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

ALEXANDER STROSS

Plaintiff,

vs.

HEARST COMMUNICATIONS, INC.

Defendant

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CIVIL ACTION # 5:18-cv-1039

JURY DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Alexander Stross respectfully alleges as follows for his original complaint against Hearst, Inc.

PARTIES

1. Plaintiff Alexander Stross ("Plaintiff" or "Stross") is a resident of Austin, Texas.
2. Defendant Hearst Communications, Inc. ("Defendant" or "Hearst") is a Delaware Corporation registered to do business in Texas. According to records filed with the Texas Secretary of State, Hearst may be served with process through its agent CT Corporation, 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136.

NATURE OF THE CLAIMS

3. This is an action for copyright infringement under 17 U.S.C. § 101 *et seq.*, arising in connection with Defendant's unauthorized commercial exploitation of Plaintiff's federally registered photographs.

**JURISDICTION and VENUE**

4. This Court has subject matter jurisdiction over this action under 17 U.S.C. §§ 101 *et seq.* (the U.S. Copyright Act); and 28 U.S.C §§ 1331 (federal question) and 1338(a) (copyrights).

5. The Court has personal jurisdiction over the Defendant, and venue in this District is proper under 28 U.S.C. § 1400 and 28 U.S.C. § 1391(b), because Defendant may be found in this District, and because a substantial part of the events giving rise to Plaintiff's claim occurred in this District.

**CONDITIONS PRECEDENT**

6. All conditions precedent have been performed or have occurred.

**BACKGROUND FACTS**

7. Stross is an accomplished architectural photographer who has worked with some of the most respected names in Central Texas real estate, including Dick Clark Architecture, Wilson Goldrick Realtors, Gottesman Residential, John Luce Builder, and Fleetwood USA. Licensed uses of his works have appeared in publications such as *People*, *Country Living*, *Luxury Home Magazine*, *Luxe*, *Refine* and *New Home Guide*; as well as appearing on billboards, online advertising, and on broadcast shows, including the *Today Show* and *Yahoo! News with Katy Couric*. Stross utilizes a painstaking photography process – creating multiple exposures of each subject, and combining and processing them to create richly detailed images. His hard work and talent have earned him a reputation as one of Austin's most gifted architectural photographers.

8. Hearst is an American mass media and business information conglomerate based in New York City, which owns a variety of newspapers and magazines, including the San Antonio Express News, the Houston Chronicle, Country Living and Cosmopolitan.

### **The Tiny House Photographs**

9. On or about November 11, 2011, Mr. Stross photographed a group of so-called “tiny houses” outside of Llano, Texas – built by lifelong girlfriends seeking a country retreat (the “Tiny House Photographs”). The tiny houses were designed by Austin-based architect Matt Garcia, to whom Mr. Stross granted a limited, non-assignable right to use the photographs for promotional purposes on his website, and in a single story published by Yahoo! News. Stross timely registered each of the Tiny House Photographs with the U.S. Copyright Office on February 20, 2012, bearing registration number VAu 1-089-810.<sup>1</sup>

10. On or about May 8, 2015, Mr. Stross was contacted by online pop-culture media blog “PopSugar” – requesting permission to reprint the Tiny House Photographs in a story about the project. Over the next few days – the story went viral, and Mr. Stross received dozens of additional requests from media outlets across the country.

11. On May 11, 2015, Tyler White – who identified himself as a digital reporter for the San Antonio Express News – contacted Mr. Stross to request authorization to use the Tiny House Photographs in a single story on mysanantonio.com – promising to provide a link to Mr. Stross’ website, and a photo credit. Stross authorized the single use; however, unbeknownst to him, and without his authorization, the photographs appeared in an additional ten (10) articles published on mysanantonio.com – by a variety of authors, including Tyler White, Rebecca Salinas, Erin Mulvaney, Madalyn Mendoza and Darla Guillen. Moreover, each of those eleven articles (including the original article by Tyler White) were republished in as many as nineteen

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<sup>1</sup> A true and copy of Stross’ registration certificate is attached as **Exhibit A**.

(19) other newspaper websites believed to be owned and operated by Hearst: chron.com, sfgate.com, ctpost.com, Seattlpi.com, timesunion.com, thetelegraph.com, registercitizen.com, newstimes.com, myplainview.com, nhregister.com, mrt.com, ourmidland.com, middletownpress.com, myjournalcourier.com, michigansthumb.com, thehour.com, greenwichtime.com, beaumontenterprise.com, and LMTonline.com. With the exception of the original story published by White, none of the other publications were authorized, and none of them included the link back to Stross' website.

12. On May 11, 2015, Stross was contacted by another Hearst reporter – Joselyn Winkfield – who identified herself as a reporter for Country Living magazine. Like Mr. White, Ms. Winkfield requested permission to utilize several of the Tiny House Photographs (6 total) for a single publication – a story in Country Living – promising a photo credit, and a link back to Stross' website. Stross authorized the single use, but again – unbeknownst to him and without his authorization, those same photos appeared in an additional three publications: housebeautiful.com, ELLE.com and Cosmo.com.

### **The 616 Oakland Photographs**

13. A second set of photographs, featuring a home that Stross remodeled at 616 Oakland in Austin, Texas (the "616 Oakland Photographs"), was also used by a Hearst publication without authorization – in an article by Lauren Smith, originally published at housebeautiful.com on August 17, 2015. The article and photographs appear to have been plagiarized from several sources, including a self-published article by Stross in 2015, and another unauthorized article appearing in an online magazine called Curbed.

14. Stross timely registered all but one of the 616 Oakland Photographs with the U.S. Copyright Office between April 9, 2010 and July 17, 2015, bearing registration numbers VAu 1-103-498, VAu 1-201-815 and VAu 1-219-537.<sup>2</sup>

15. In all, Stross believes that Hearst used his photographs in a total of 209 publications without authorization or compensation. Defendant was well aware that permission was required, having sought Stross' authorization for two articles. Accordingly, its subsequent infringement of Stross' copyrights was by all appearances willful.

16. Stross now brings this suit for copyright infringement.

**COUNT I:**  
**COPYRIGHT INFRINGEMENT**

17. Plaintiff realleges and incorporates herein the foregoing paragraphs.

18. By its actions alleged above, Defendant has infringed Plaintiff's federally registered copyrights. Specifically, by copying, distributing and/or displaying the Photographs without his consent, Defendant has infringed Plaintiff's exclusive rights set forth in 17 U.S.C. § 106, and is liable therefor.

19. Defendant's actions constituted willful infringement of Plaintiff's copyrights inasmuch as Defendant knew, or had reason to know, that its actions constituted copyright infringement; and/or because it acted with reckless disregard of Plaintiff's copyrights.

20. As a result of the foregoing, Plaintiff is entitled to actual damages plus profits of the Defendant; and/or statutory damages of up to \$150,000 per work infringed, plus attorney's fees and costs of court. 17 U.S.C. §§ 504, 505.

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<sup>2</sup> True and correct copies of Stross' registration certificates are attached as **Exhibit B**. One of the photographs used by House Beautiful was inadvertently omitted from Stross' registrations; however, he currently seeks no recovery for that photograph.

**JURY DEMAND**

21. Plaintiff asserts his rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

**PRAYER**

Plaintiff prays for:

- A. An order that Defendant and all persons under its direction, control, permission or authority be enjoined and permanently restrained from exploiting the Photo;
- B. An award of actual damages and/or statutory damages under 17 U.S.C. § 504(c);
- C. An award to Plaintiff of his reasonable costs and attorney's fees under 17 U.S.C. §§ 505;
- D. Prejudgment and post-judgment interest on any damage award as permitted by law; and
- E. Such other and further relief as the Court may deem just, proper and/or necessary under the circumstances.

Dated this 2nd Day of October, 2018

**LAW OFFICE OF BUCK MCKINNEY, PC**

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